

The Chancery Bar Litigant in Person Support Scheme (‘CLIPS’)

Q&A for Participants High Court

Thank you for volunteering. Those thanks come from the Chancellor and the Judges of the Chancery Division, the Chancery Bar Association (“ChBA”), the RCJ Advice Bureau (“Advice Bureau”), the Personal Support Unit (“PSU”), Advocate (formerly known as the Bar Pro Bono Unit (“Advocate”)) and LawWorks.

In addition to this note, please do make sure you read:

- the Protocol;
- the Explanatory Note (given to those attending the Interim Applications Court in the Rolls Building without representation); and
- the Concluding Letter given to unrepresented parties at the conclusion of a day’s assistance.

These are all available on the website, as is the monthly rota.

Am I obliged to provide assistance in every case?

- You must always take into account your professional obligations and your competence when deciding what assistance you are able to offer, and it is your responsibility to satisfy yourself it is appropriate to act.
- You are free to decline to provide assistance, and to decide the scope of any assistance you do provide.
- The Court will respect your decision in these matters, and although the decision will be at the discretion of the Court, you are also free to make reasonable requests (for example, that the Court takes a matter further down the list in order to give you sufficient time to consider the case).
- The CLIPS scheme is only for LIPs intending or due to appear before the Chancery Applications Court. You are not able to provide assistance to other persons under Advocate’s licensed access.

What about insurance?

- Barrister Participants must be tenants at a set of chambers (or practising on their own account or in employment) with insurance cover under the Bar Mutual Insurance scheme, and members of the ChBA, COMBAR, TECBAR, ELBA or PBA. They will volunteer under the licensed access auspices of Advocate
- Solicitor Participants must be employed by a firm of solicitors with appropriate insurance. They will volunteer under the licensed access auspices of the Advice Bureau, and are therefore covered by insurance arranged by the Advice Bureau.

What if I find that I am no longer available on a day for which I have volunteered?

- A CLIPS shift constitutes a professional commitment, and must be treated as such.
- You should withdraw only in exceptional circumstances, and you are responsible for providing a replacement.

On my duty days am I on standby or do I turn up outside the Court?

- You must be outside Court 10 at **10am** on your duty days. Please make yourself known to the Usher or Associate as soon as you arrive.
- When the list is called on at **10.30am** please go into court whether or not any litigant in person has already contacted you. There may be a person without representation inside whom you can assist, or the Court may know that one is due to appear later.
- You must then remain outside the Court until **11am** but if there is no one who requires your assistance you may return to Chambers / your place of work.
- However, you are **on duty** until the end of the Court day, and you do need to be by a telephone in Chambers / at work.
- You may receive a call from the Advice Bureau or the Judge's clerk at any time between 10am and 4.30pm asking you to attend the Court. You should then attend as soon as possible, and in any event no more than 30 minutes should elapse between the call and your attendance at Court.
- If you are contacted by one of the Court staff rather than the Advice Bureau you **must** let the Advice Bureau know immediately (CLIPS@rcjadvice.org.uk) that you have been called and that you are on your way to court.

What should I do to prepare?

- Please read the Protocol, Explanatory Note and Concluding Letter in order to inform yourself about the scheme.
- Sometimes copy papers in a listed matter will have been left by the unrepresented person at the Advice Bureau the day before. There may also be case notes prepared by the Advice Bureau. If so, you will be contacted by the Advice Bureau.
- You should please liaise with any other volunteer on duty so that any copy papers or case notes are collected from the Advice Bureau the day before your duty day between 3 and 4.30pm. You can contact the Advice Bureau's staff member for Interim Applications Schemes, on CLIPS@rcjadvice.org.uk to arrange to collect these. Please divide the matters suitably between yourselves for the purposes of preparation.

What practical steps should I take on the day?

- Conference Room 18 (outside Court 10) will be set aside for you for the purpose of speaking confidentially to the litigant in person. Collect from the Usher or Associate the CLIPS File which contains useful documents, and the key to Conference Room 18. Please put the CLIPS banner outside Conference Room 18 when you arrive and put it back before you leave.
- The Usher or Associate will, if they can, refer parties without representation to you, but you should also keep an eye out for individuals who may need the scheme's assistance.
- Whenever you leave Conference Room 18, please lock the door.
- At the end of the day, lock the door, place the key in the CLIPS File, and return the File (containing all of the useful documents) to the Associate or Usher. If the Court is closed by the time you have finished, please take the CLIPS File with you and ask your clerk to deliver it that afternoon to the clerk of one of the Participants on duty the next day.
- Please give all unrepresented parties a copy of the Explanatory Note. There are a number of laminated copies of the Explanatory Note in Conference Room 18. The litigant may have difficulty reading and digesting the whole of the note, but please draw their attention to at least the boxed text.

What about the question whether the person seeking help could afford to pay?

- For practical reasons please simply assume that the unrepresented person is unable to afford legal representation. If in doubt, phone the Advice Bureau and ask for their help.

What type of help am I expected to give?

- You are under no obligation to provide any, or any particular, assistance. (See “Am I obliged to provide assistance in every case?”, above.)
- There are 3 types of help you might provide: (a) advice (b) representation and (c) providing details (if needed) for an application to Advocate for further assistance at a later date.
- You should always try, if appropriate, to advise. It is understood that you are new to the case, that the conditions are not ideal and that time is limited. Please offer such immediate advice to the unrepresented person as is possible in the circumstances.
- The scheme also contemplates that you will be ready, if requested and if proper to do so, to appear for the unrepresented person on that day’s hearing.
- At the end you should (so far as possible) advise the unrepresented person what to do next.
- If an unrepresented person does not have a case listed that day, you should decide whether it is appropriate for you to assist, and you may decide that they should instead be referred to the Advice Bureau. There will be referral cards available for you to give the unrepresented party.
- You should not in any event assist unrepresented persons who do not intend or are not due to appear before the Chancery Applications Court. Such assistance would not be covered by Advocate’s licensed access.

Can I act for a party that is not an individual?

- Yes. LIPs can be entities as well as individuals.

Should Participants work together?

- Do be careful about possible conflict issues. If there are two volunteers present that day, do ensure when you are interviewing the unrepresented person that there is no possibility of there being an unrepresented person on the other side. If there

is any such possibility, make sure you interview that person in the absence of the other volunteer in case he or she is required to represent the other side.

- Subject to that, Participants are free to work together where appropriate.

What if there are several points but I consider one to be a hopeless point or one that I consider may not properly be advanced?

- You should inform the unrepresented person that you are prepared to make only part (rather than all) of the argument. You should explain why.
- If he or she insists that the point is advanced, you should say that he or she will have to advance that point him- or herself, and you should ask the Court to hear both you and the unrepresented person, on the basis that you will make part of the argument and the unrepresented person will make the remainder of the argument.
- You should inform the unrepresented person that they will not (usually) be asked to comment on or add to any arguments that you have presented to the court.
- If the LIP's case is hopeless or an unarguable case, please do not suggest that the unrepresented person seek (further) advice from Advice Bureau and/or Advocate.

What if I am concerned that the unrepresented person maybe a vexatious litigant?

- The CLIPS papers in conference room 18 include a list of persons who have been declared vexatious litigant or who are subject to Civil Restraint Orders. These litigants may require the permission of the court before bringing a claim or making an application.
- There is also a list of any unrepresented persons who have made excessive and repeated use of the CLIPS scheme.
- You are free to decline to provide assistance, and to decide the scope of any assistance you do provide for these unrepresented persons.

What if the matter is nearing the limit of my competence or too complicated to be able to manage on the day?

- As explained above, you are responsible for ensuring it is professionally appropriate and within your competence to assist. However, please do not be deterred from providing assistance where you can, because the unrepresented

person will often be better placed with what help you can give, than without that help.

- There will be resources in the conference room, including a “phone a friend” list.
- Consider working jointly with any other duty Participant on the day (subject to the point above about conflicts).
- Consider whether it may be in the interests of the unrepresented person if the matter could be adjourned, with an application then made to Advocate to bring in a more experienced advocate or one with specific expertise (if appropriate) on a future occasion or to arrange detailed advice.
- Where any application to Advocate for assistance may be involved please remember to make clear to the unrepresented person that the application requires a means test and may not be successful and that it will take some time to be processed except in cases of real emergency.

What about costs?

- In appropriate circumstances, you should consider making an application for a pro bono costs order under s. 194 of the Legal Service Act 2007 and CPR 46.7. The effect of a pro bono costs order is that the paying party must make a payment of a sum no greater than the party with pro bono representation would have been entitled if representation had not been provided free of charge to a charity, The Access to Justice Foundation.
- Further information about pro bono costs orders is available in Conference Room 18 and can be found at www.ATJF.org.uk. The notes in the White Book to CPR 46.7 and at PD46 4.1 are also helpful.
- Although a written statement of costs is usually required (PD44 9.5) the failure of a party to provide a written statement will only be taken in account by the court if there is no reasonable excuse for the failure (PD44 9.6). Obviously the provision of a written statement will not be possible where you first became involved with the case on the day you are volunteering (rather than having received papers ahead of time). In those circumstances, you might consider reminding the Court that you were engaged only that day and that the requirement for a written statement is in Practice Direction 44 and is not a Rule. You could inform the Court orally of the time you have spent and your hourly rate (or if you consider the case could have been handled by someone significantly junior to you, suggest an appropriate hourly rate).

What should I do at the end of a case?

- At the end of a day's work for an unrepresented party, you must complete a Concluding Letter (copies can be found in the CLIPS File), which will summarise what happened and what needs to happen.
- One copy of the Concluding Letter should be given to the unrepresented person. If it is not possible for the unrepresented person to wait for you to copy the letter, you could consider taking an email address so that you can send a copy to the unrepresented person on your return to Chambers or (if you are comfortable that you have the appropriate level of security on your phone) you could consider taking a photograph of the Concluding Letter. However, please make every effort to provide a copy to the unrepresented person and please retain a copy for the Advice Bureau
- The Concluding Letter should be provided urgently the same day in the event that the LIP's matter is returning to court the following day. In that case, if you are not continuing with the case (which you are under no obligation to do), you should ensure that the Concluding Letter fully briefs the Advice Bureau on the stage that has been reached in the hearing, and if appropriate and possible you should try to speak to the Participant who will be taking the matter over the next day, in order to ensure continuity. They will be identifiable from the rota in the CLIPS File and on the ChBA website.
- **The copy of the Concluding Letter for the Advice Bureau should be emailed to CLIPS@rcjadvic.org.uk.**
- After you have given the client the Concluding Letter and provided a copy to the LIP your involvement in the case under the licensed access provided by Advocate is at an end. If the LIP requires further pro bono assistance they should be directed to the Advice Bureau who can help them apply to Advocate. If you wish to volunteer to assist on the case going forward on a pro bono basis please let the Advice Bureau know.

What if the unrepresented person is struggling to cope with the stress of the occasion and might benefit from some trained (non-legal) company?

- Consider asking the unrepresented person to go to the PSU office in the Royal Court of Justice in the Strand, or contact the RCJ Advice Bureau yourself (020 7947 7585); please use this number for urgent requests only) to ask him to see whether a PSU representative can be made available.
- If a PSU representative is made available, please make them feel welcome.

- The involvement of a PSU representative might be valuable in many cases, but particular examples include (a) where you will need to concentrate on advocacy and the unrepresented person will find it difficult to be left alone, (b) where the matter is complex and trained (non-legal) company will help the unrepresented person to concentrate or to take in what is happening or what you are telling them, (c) where the unrepresented person suffers from a material disability, and (d) where there is hostility or mistrust between the other side or their lawyers and the unrepresented person.
- The unrepresented person may be accompanied by a “McKenzie Friend” who they wish to provide support. If that is the case please respect the choice, but in case of difficulty contact the Advice Bureau or Advocate. Sometimes this is another situation in which a PSU representative may be of help.
- A list of useful telephone numbers is available in the CLIPS File, and there is a telephone in the conference room (see below).

What if the unrepresented person or the other party has a “McKenzie Friend”? Is the “McKenzie Friend” entitled to speak in court?

- Litigants have the right to have reasonable assistance from a lay person (“McKenzie Friend”) to i) provide moral support for litigants; ii) take notes; iii) help with case papers; iii) quietly give advice on any aspect of the conduct of the case. A McKenzie Friend may not: i) act as the litigant’s agent in relation to the proceedings; ii) manage litigants’ cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses.
- Useful guidance on the exercise of the right to have assistance of a lay person is contained in *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R. 1881.
- The court may grant a right of audience to a McKenzie friend on a case-by-case basis but the *Practice Note* states that “Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline”.
- The unrepresented person may find the court is unwilling to grant their McKenzie Friend permission to address the court if a CLIPS volunteer is available.
- Some McKenzie Friends charge fees for their assistance. The extent to which such fees may be recovered from the litigant or from the other side is dealt with in the *Practice Note*.

What if I need more time on the day to read the papers or to take instructions or to research a point?

- You could consider asking the Judge or the Associate or Usher (involving the other side if present) whether the matter can be taken at a later time that day (by asking for it to be mentioned at a convenient moment) or at a lower point in the list.
- In a complex case you may sometimes conclude that the merits and suitability of seeking an adjournment will need to be considered.

What resources are available within the Rolls Building to help me prepare for a hearing?

- Please bring your own procedure books, and any texts that are known to be needed from any pre-reading in a listed matter. There is a library in Conference Room 18 which contains files with guidance notes and certain text books.
- In Conference Room 18, there is a telephone and a broadband connection with a wireless router and a printer/copier.

What should I do once I have got on top of the matter?

- It may be that there are copies of documents that need to be made available to the Judge's clerk, e.g. an application notice that you have helped to complete, or a witness statement or supporting documents, or even a note summarising the points that arise. If the Judge's clerk is not present in the Court, he or she may be contacted on the number shown in the list of numbers in the CLIPS File.
- Although your primary duty is to the unrepresented litigant, you are also there to help the court to serve the interests of justice, so please consider how you can help the Judge and the court staff to deal with the application most effectively.

As a barrister, am I entitled to act alone, without a solicitor? Or what if the matter is of a complexity or nature that more assistance is needed?

- Barristers participating in the CLIPS scheme are entitled to act alone, without a solicitor, because they are acting under the auspices of Advocate, which has a licence from the BSB.
- Where the matter is of a complexity or nature that the assistance of a solicitor as well as the barrister is necessary you are not required to appear (although you may consider whether an application for an adjournment to enable the unrepresented person to take further advice is appropriate) and the unrepresented person should be referred to the Advice Bureau for further assistance.

- You should never act in circumstances or to an extent where your own competence will be exceeded. Examples of a matter of this complexity might be (a) the case where an unlisted matter needs both a statement to be taken there and then and advocacy prepared; or (b) the case where a detailed record and note of advice about the giving of a cross undertaking in damages, or the giving of undertakings in place of an injunction, needs to be taken at the same time as the advice is actually given rather than by a note to be prepared afterwards.
- If you are yourself in any doubt please refer to Advocate before proceeding further.

I understand that 3 weeks' notice is required for an application for further assistance from Advocate. What if the case needs further assistance within a shorter period?

- Please make Advice Bureau staff aware of this and they will consider whether an emergency request for assistance to Advocate is appropriate.

What about GDPR?

- The Explanatory Note given to unrepresented persons to read contains a data protection notice. The notice states that duty advocate will have a privacy notice on their chamber's or firm's website. If this is not the case you should tell the litigant where they can find your privacy notice.